

SERVICE DATE
Jun 22, 2018

PSC REF#:345071

Public Service Commission of Wisconsin
RECEIVED: 06/22/2018 3:05:01 PM

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Dalton Sanitary District, Green Lake County, Wisconsin,
as a Water Public Utility, for Authority to Abandon its Water Utility

1529-WA-100

FINAL DECISION

This is the Final Decision in the Class 1 proceeding conducted by the Public Service Commission (Commission) on the application of Dalton Sanitary District for approval to abandon its water utility under Wis. Stat. § 196.81 and Wis. Admin. Code § PSC 2.11, and to transfer its water assets to the Dalton Volunteer Fire Department under Wis. Stat. § 196.80(1m)(e).

This application is APPROVED, subject to conditions.

Introduction

On October 10, 2017, the Commission received an application from the Dalton Sanitary District (Dalton) to abandon its water utility and transfer its water assets to the Dalton Volunteer Fire Department for firefighting purposes. ([PSC REF#: 342154](#).) In its application, Dalton stated significant improvements are needed to bring its water system into compliance with the requirements applicable to public water systems and Dalton lacks sufficient financial resources to make such improvements. In addition, Dalton indicated the property owners whose parcels are served by Dalton's water system had been informed of the issues and the majority had voted to abandon the sanitary district and drill private wells to provide water to their properties.

The Commission issued a Notice of Proceeding on November 16, 2017. ([PSC REF#: 333654](#).) On January 19, 2018, the Wisconsin Department of Natural Resources (WDNR) filed a Notice of Appearance in this docket. ([PSC REF#: 336198](#).) On February 2, 2018,

Commission staff filed a motion to approve a stipulation between Commission staff, Dalton and the WDNR regarding the issues and schedule for this proceeding. ([PSC REF#: 337215](#).) On February 12, 2018, Administrative Law Judge Michael E. Newmark issued a Scheduling Order establishing the issues, schedule and other facilitation matters for this proceeding. ([PSC REF#: 337685](#).) Pursuant to due notice, on April 10, 2018, the Commission held a technical hearing in Madison, Wisconsin to receive technical information. ([PSC REF#: 337688](#).) On April 11, 2018, the Commission held a public hearing in Dalton, Wisconsin, to receive public comments. The Commission's public hearing process involved the opportunity to submit written comments through the Commission's web site or at the public hearing, or to testify at the public hearing. The Commission received 19 electronic comments on its website about the proposed abandonment. At the public hearing there were five written comments and 18 persons provided verbal comments under oath.

The parties for purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

The Commission considered this matter at its open meeting of May 17, 2018.

Findings of Fact

1. Dalton is a public utility as defined under Wis. Stat. § 196.01(5)(a) and provides water service to approximately 59 customers in Green Lake County.
2. Dalton's public water system is not in compliance with WDNR requirements.
3. Commission staff estimated that over the next 5 to 10 years, Dalton's water system will likely require an estimated \$1,565,000 in improvements in order to meet WDNR requirements. This would likely result in average water bills increasing from the current \$41 per

month to a proposed \$104 per month (not including any increase in Dalton's operations and maintenance budget). This represents a 154 percent rate increase.

4. The estimated cost of drilling a private well is approximately \$15,700, plus \$750 to install a point-of-use treatment system.

5. Abandonment of Dalton is the most economical alternative.

6. The majority of the property owners whose parcels are served by Dalton voted to move forward with dissolving Dalton and proceeding with the installation of private wells.

7. Dalton identified a plan for abandoning the public water system including the following steps and actions:

- a. Following Commission approval for the abandonment of the water system, Dalton will coordinate with the Commission, WDNR and water operator-in-charge to establish a plan to discontinue water service as of October 1, 2018. The plan will include water operator planning sessions and related customer notification. These sessions will identify special actions that need to be taken as customers exit the water system to ensure the remaining customers have access to safe water.
- b. After the discontinuation of service, Dalton will transfer all water assets, at no cost, to the Dalton Volunteer Fire Department. The transferred assets will include: Well No. 1, Well No. 2 and well house, generator, well pumps, hydro-pneumatic tank, water main, meters, hydrants and computer equipment. The Dalton Volunteer Fire Department will only use the water assets to provide water to the firehouse and fire suppression to the community.

- c. Dalton will file the PSC 2018 Annual Report by April 1, 2019.
 - d. Dalton will transfer its funds, if available, not to exceed the amount of \$7,587.39, to the Dalton Volunteer Fire Department to satisfy outstanding debt.
 - e. After paying all debts and any funds to the Dalton Volunteer Fire Department, any funds remaining will be disbursed in accordance with Wis. Stat. § 60.785(3)(b).
 - f. After the discontinuation of water service Dalton will ensure that all outstanding invoices are paid and all outstanding checks have cleared Dalton's bank. Dalton will also terminate all existing insurance coverages and bonding coverage.
 - g. Dalton's bank account will be closed.
8. The transfer of Dalton's water plant to the Dalton Volunteer Fire Department at no cost is reasonable in relation to the value of the assets.
9. The abandonment of Dalton's water utility and the transfer of its water plant is in the public interest.

Conclusions of Law

- 1. Dalton is a public utility as defined in Wis. Stat. § 196.01(5)(a).
- 2. The Commission has jurisdiction under Wis. Stat. §§ 196.02, 196.395, 196.80 and 196.81 and Wis. Admin. Code § PSC 2.11, to approve the abandonment of service by Dalton and the transfer of the water assets to the Dalton Volunteer Fire Department.

3. The disbursement of any remaining Dalton funds at dissolution is governed by Wis. Stat. § 60.785(3)(b).

4. The Commission, in granting approval for abandonment pursuant to Wis. Stat. § 196.81 may impose any term, condition or requirement it deems necessary to protect the public interest.

Opinion

The Legislature has authorized the Commission to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction. Wis. Stat. § 196.02(1). Since 1907, the Commission has regulated public utilities to ensure that “reasonably adequate service and facilities” are available to the public at rates that are “reasonable and just.” Wis. Stat. § 196.03(1). The evaluation of an application affecting the public interest, such as the one proposed in this docket, is an area in which the Commission has special expertise.

The WDNR is charged with implementing its Safe Drinking Water statutes and rules.¹ The Commission is supportive of all water utilities’ efforts to ensure that safe, reliable drinking water is provided at reasonable cost through compliance with WDNR regulations. When issues with the potential to impact water quality arise, they must be addressed in a reasonable manner. The WDNR’s review of the application in this docket complimented Commission staff’s review by providing evidence regarding the water quality issues in the Dalton community.

In this docket, the Commission must determine whether abandoning Dalton, which would require customers to drill their own private wells, is in the public interest. Wisconsin Stat.

¹ See generally, Wis. Stat. chs. 280, 281; Wis. Admin. Code chs. NR 809-812.

§ 196.81(1) provides that “[n]o public utility may abandon or discontinue any line or extension or service thereon without first securing the approval of the commission. In granting its approval, the commission may impose any term, condition or requirement it deems necessary to protect the public interest.”

As demonstrated by the detailed and complex record in this case, determining whether the abandonment of a public utility is in the public interest requires a high degree of discretion and judgment, and reasonable people may reach different conclusions. In addition, such decisions involve intertwined legal, factual, value, and public policy determinations. However, the Commission, as the finder of fact, is charged with sifting through all of the information to reach a well-reasoned decision. In doing so, the Commission uses its experience, technical competence and specialized knowledge to determine the credibility of each witness and the persuasiveness of the highly technical evidence presented on each issue. The Commission’s expertise is particularly important in cases such as the present where there are both financial and public health benefits and costs associated with abandoning the water system.

Background

Dalton is a town sanitary district and a municipal public utility currently providing water service to approximately 59 customers. In 1968, the Dalton Fire Department drilled a well for its use in fighting fires. A nearby church needed water and was connected to the well. As other private wells failed, those homes also connected to the fire department water system. After a sufficient number of customers connected, it was deemed to be operating as a water public utility and thus needed to be organized as such. In 1974, the Dalton Volunteer Fire Department, Inc. was organized as a regulated water public utility. Over time, it became evident that the Dalton

Volunteer Fire Department did not have sufficient financial resources and borrowing capacity to improve the system.

In its Final Decision, dated October 8, 2015, the Commission authorized the creation of the Dalton Sanitary District and authorized the Dalton Volunteer Fire Department to abandon its utility and transfer its assets and liabilities without monetary or financial compensation to the newly created sanitary district (docket 1529-CW-100). The Final Decision in docket 1529-CW-100 included an order point that required Dalton to develop a cost estimate to upgrade the water system to meet state standards and an estimate of the cost to abandon the water system and drill private wells. The primary reason for the establishment of the new sanitary district was to become eligible for infrastructure grants that were not available to the fire department.

In a sanitary survey report dated June 20, 2016, the WDNR identified three significant deficiencies and eleven deficiencies in Dalton's water system. The three significant deficiencies were: (1) the system does not have the financial capacity to meet state and federal requirements of the Safe Drinking Water Act; (2) the system pumping capacity is not adequate; and (3) no elevated water storage is provided to meet code requirements.

On January 9, 2017, Dalton notified the Fire Department that the Department could no longer use the system's fire hydrants to fill tanker trucks or fight fires, due to the inability of the water system to maintain sufficient water pressure during such usage.

In February 2017, Dalton commissioned MSA Professional Services to conduct a private well feasibility study. The report indicated that it may be necessary for those drilling private wells to follow certain well construction recommendations and/or install point-of-use water treatment systems in order to address water quality concerns. Dalton estimated the cost of

drilling a private well to DNR's recommended specifications would be approximately \$15,700, with additional water treatment costs of \$750 for a point-of-use treatment system. This estimate does not include operation and maintenance costs of the private well or treatment system.

On September 28, 2017, Dalton held a vote among property owners within the sanitary district to determine if it should upgrade the public water system or abandon the water system and drill private wells. Out of 136 land parcels, 95 votes were returned and counted, of which 56 voted to drill private wells, and 39 voted to upgrade the public water system. On October 10, 2017, the present application to abandon Dalton was filed with the Commission.

On January 8, 2018, the Kingston Town Board adopted and approved a resolution to dissolve the sanitary district upon Commission approval to abandon water service.

Analysis

The primary issue in this proceeding is whether the abandonment of Dalton is in the public interest. That determination requires that the Commission weigh the financial and public health benefits and costs associated with abandoning the water system.

Dalton stated the cost to repair its water system and bring it up to state standards is not economically feasible, noting Dalton lacks economy of scale as it has only 59 water customers over which to share its utility costs. Dalton noted the average existing customer currently pays \$41 per month for water service. These current rates include only \$24,100 in annual operation and maintenance expenses. Dalton estimated that it will need \$46,000 in operation and maintenance expenses in order to provide service that meets state standards. This would add additional costs to the average customer's water bill. In addition, Dalton provided evidence the cost to install a private well constructed to WDNR's specifications is estimated at \$15,700 and

should not require additional nitrate treatment in order to provide safe water. If additional water treatment is needed, the costs would range from approximately \$750 to \$9,000, depending on whether a point of use or point of entry system is selected.

The WDNR provided testimony it would cost an estimated \$600,000 to drill a new public well that would resolve significant deficiencies 2 and 3, as listed in the WDNR's 2016 Sanitary Survey Report for Dalton. Another \$150,000 in main replacements would be needed to meet WDNR code if either the water system was used to provide public fire protection, or if it became apparent minimum water pressure requirements were not being met. The WDNR recommended a feasibility study be performed to determine the cost to make the necessary repairs to bring the system into compliance with WDNR's code. In addition, WDNR staff noted all of the 13 private wells that were drilled in Dalton between October 2017 and February 2018, have had water samples that exceed state and federal standards for nitrate concentrations in public drinking water supplies. The WDNR cannot require ongoing testing or nitrate treatment for private wells.

In addition, the WDNR noted in some instances, it would be difficult to locate private wells within Dalton due to the required separation distances from contaminated sources. The WDNR provided evidence regarding the health effects of excessive nitrates in drinking water as well as the fact the WDNR cannot require a homeowner to install a nitrate treatment system. Further, the WDNR noted there is no guarantee a homeowner will maintain this type of system after it is installed. WDNR recommended that if the Commission denied the proposed abandonment that the Commission: include a recommendation that a local ordinance prohibiting the drilling of private wells be enacted as soon as feasible; require that Dalton conduct a

feasibility study to determine the cost to bring the public water system into compliance with state standards; and include a recommendation that Dalton implement a standby tariff.

Commission staff considered a longer planning horizon than the WDNR when it estimated Dalton will need to repair Well No. 1, drill a new backup well, address rising nitrate levels in Well No. 1, replace the hydro-pneumatic tank and replace hydrants and valves. Commission staff estimated the cost to upgrade the water system over the next 5 to 10 years will cost approximately \$1,565,000. This would result in the average customer paying \$104 per month. This estimate assumed \$24,100 in annual operation and maintenance expenses. It also assumed these upgrades are financed using a \$500,000 community development block grant, \$319,500 in principal forgiveness and \$745,500 in a Safe Drinking Water Loan at 1.65 percent interest over 20-years. Commission staff noted such upgrades to the public water system would result in less risk for contamination from nitrates and other contaminants than would occur with the use of private wells. However, Commission staff noted the February 2017 private well feasibility study performed by MSA Professional Services estimated the installation of each new private well would cost between \$12,500 (shallow well without treatment) and \$24,700 (deep well with treatment). This estimate does not include ongoing operation and maintenance costs.

The Commission recognizes and appreciates the work of all the parties to ensure a robust record for the Commission to make a decision. Unfortunately for the customers of Dalton, there is no easy solution. Upgrading the public water system will require considerable resources and would result in Dalton filing for a rate increase with the Commission, which is ultimately paid by Dalton's customers. Drilling private wells will also require the investment of considerable resources by each property owner. Either option can ensure residents have high quality water,

but in the case of private wells each resident would be responsible for monitoring the water quality.

Based on the evidence presented in this case, the Commission finds the public interest favors granting the application to abandon Dalton. The Commission concludes the extent of needed repairs and the diminishing customer base make any alternative, other than abandonment, uneconomic. The record is clear Dalton would be required to drill a new well in the near future at a cost of at least \$600,000 to come into compliance with existing WDNR code requirements. An additional, \$150,000 in main replacements would be needed to meet DNR code if either the water system was used to provide public fire protection, or if it became apparent minimum water pressure requirements were not being met. In addition, significant costs to upgrade other parts of the water system are likely foreseeable in the relatively near future.

The cost for residents to drill and maintain their own wells is less than the cost for Dalton to make the necessary upgrades. A private well constructed to WDNR's specifications is estimated to cost \$15,700 and should not require additional nitrate treatment in order to provide safe water. If additional water treatment is needed, the costs would range from approximately \$750 to \$9,000, depending on whether a point of use or point of entry system is selected. In addition, a majority of the property owners voted to abandon the water system and drill private wells. Private wells are used throughout Wisconsin and can ensure residents have high quality water. The Commission encourages Dalton residents to continue to work with the WDNR to determine the appropriate depth and casing of private wells, and when needed, to ensure appropriate treatment to maintain water quality.

Transfer of Assets

After the discontinuation of service, Dalton will transfer all water assets, at no cost, to the Dalton Volunteer Fire Department. The transferred assets will include: Well No. 1, Well No. 2 and well house, generator, well pumps, hydro-pneumatic tank, water main, meters, hydrants and computer equipment. The Dalton Volunteer Fire Department will only use the water assets to provide water to the firehouse and fire suppression to the community.

The Commission has considered the reasonable value of Dalton's property and assets to be transferred to the Dalton Volunteer Fire Department, as required by Wis. Stat. § 196.80(3). The assets were originally owned by the Dalton Volunteer Fire Department and were transferred at no cost to Dalton in 2015 when the sanitary district was formed. Given the extent of needed repairs to continue operating Dalton as a public utility and the fact that the assets were transferred to Dalton in 2015 at no cost, the Commission finds that the transfer of the assets to the Dalton Volunteer Fire Department at no cost is reasonable.

The transfer of ownership of the assets will be completed once all private wells have been drilled. Any remaining funds will be disbursed by Dalton in accordance with Wis. Stat. § 60.785(3)(b).

Order

1. Dalton shall discontinue all activities related to municipal water service that has been provided to customers no later than October 1, 2018.
2. Dalton shall complete all the abandonment steps identified in its application to the Commission.

3. Dalton shall abandon its facilities in accordance with WDNR requirements and any other applicable local, State, or Federal requirements.

4. Dalton shall transfer all water assets, at no cost, to the Dalton Volunteer Fire Department.

5. Dalton shall disburse any remaining funds in accordance with Wis. Stat. § 60.785(3)(b).

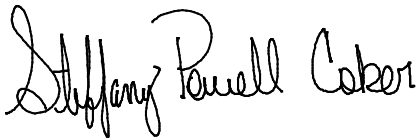
6. Dalton shall submit its 2018 Annual Report to the Commission by April 1, 2019.

7. This Final Decision takes effect one day after the date of service.

8. Jurisdiction is retained.

Dated at Madison, Wisconsin, the 22nd day of June.

For the Commission:

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive, flowing style.

Steffany Powell Coker
Secretary to the Commission

SAK:spk:jac DL:01640527

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.² The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

² See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

CONTACT LIST FOR SERVICE BY PARTIES

PUBLIC SERVICE COMMISSION OF WISCONSIN (NOT A PARTY BUT MUST BE SERVED)

ANDREW CARDON; STEPHEN KEMNA

PO BOX 7854

MADISON WI 53707-7854

USA

ANDREW.CARDON@WISCONSIN.GOV; STEPHEN.KEMNA@WISCONSIN.GOV

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

JUDY MILLS

101 SOUTH WEBSTER STREET

PO BOX 7921

MADISON WI 53707

USA

JUDITH.MILLS@WISCONSIN.GOV

DALTON SANITARY DISTRICT

VENESSA WISHART

STAFFORD ROSENBAUM LLP

222 WEST WASHINGTON AVENUE, SUITE 900

MADISON WI 53701

USA

VWISHART@STAFFORDLAW.COM